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Supreme Court of the United States

OCTOBER TERM, 1932

No. 379

THE PENNSYLVANIA RAILROAD COMPANY,
Petitioner,

—against—

MARGARET V. CHAMBERLAIN, as Administratrix of the Goods, Chattels and Credits of CHARLES FREDERICK CHAMBERLAIN, deceased,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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I.

Official Report of Opinions Delivered.

The opinion of the United States Circuit Court of Appeals will be found in 59 Fed., 2nd Series, 986. The District Court delivered no opinion.

II.

Statement of Case

Margaret V. Chamberlain, in her representative capacity, sued the Railroad Company to recover damages for the death of her husband, brought about through the negligence of the carrier. The case was tried in the Southern District of New York, before District Judge Anderson and a Jury. At the close of entire case, the District Judge directed a verdict in favor of the carrier. The widow appealed to the Circuit Court of Appeals, for the Second Circuit, and the judgment of the District Court was reversed and a new trial was granted.

The carrier now seeks to review by certiorari, the judgment of the Circuit Court of Appeals.

Chamberlain met his death while working as a brakeman in the Morrisville, Pa. yard of the carrier, while engaged in interstate commerce. He had been employed by the carrier for only a few weeks prior to the accident. His work required him to ride cars down the "Hump" into the various tracks in the yard, control their movement, and finally bring them to a stop. After the cars were dropped off the "Hump", they would be permitted to roll into the tracks by their own momentum.

Just prior to the accident, Chamberlain was riding a cut of two cars down the "Hump", which were to go into track 14. His draft was followed by a draft of four cars for track 20. Following that, there was a draft of nine cars

for track 14, the same track that Chamberlain's draft was to go into.

III.

Facts

It was the plaintiff's contention that Chamberlain was thrown off his draft by reason of the nine car draft coming in contact with his draft.

A witness (Bainbridge), testifying for the plaintiff, said that he was standing at the bottom of the "Hump", at a place marked "B" on the map. He was waiting outside of the yard office for his conductor. He happened to be a member of a switching crew. He saw Chamberlain's draft go down the "Hump" at about 8 or 10 miles an hour, with Chamberlain standing at the brake on the rear end of the second car. He then saw another draft, which concededly was that for track 20, and then saw the draft of nine cars, which also was to go into 14.

Both Chamberlain's and the nine car draft were comprised of gondola cars and were loaded with gravel. The significance of this fact lies in the position of the hand-brakes and the step where brakemen must stand to apply the brakes. Their bodies are not obscured by the superstructure of the cars.

After Bainbridge saw the drafts go by him, he paid no more attention to it for the moment (fol. 154).

The next thing he observed as he looked, was Chamberlain's cut moving on track 14, about two car-lengths from the switch leading into the track (fol. 155) At the same time he saw the nine car draft just going into track 14, about two car-lengths way from Chamberlain's draft. At that time, Chamberlain's draft was going no more than three miles an hour and Chamberlain was still standing at his brake on the rear of the second car (fols. 156, 7). The nine car draft however, was going at about 14 or 15 miles an hour (fol. 159).

The witness then stated that "possibly a couple of seconds" later, he heard a loud crash (fols. 160, 163, 164). He then looked again and saw the cars drifting in on track 14 (fol. 161). They were moving together in one band (fols. 161, 164, 165). At that time, the band of cars was going at a speed of about seven or eight miles an hour (fols. 246, 7).

After the crash when he saw the cars moving in one band, Chamberlain was no longer at his position at the brake (fol. 164). Bainbridge did not know that an accident had occurred and paid no more attention to it (fol. 165). He remained at his position in front of the yard office for a couple of minutes, and then heard hollering from the vicinity of track 14. He then ran down to track 14 and saw Chamberlain's body lying between the rails of track 14, about five or six car-lengths from the switch leading into it, and a few feet to the rear of the last car of the nine car draft (fols. 167-169).

The proof also showed that when cars are sent down on the various tracks, they are supposed to couple up to whatever cars are already on the track, but when cars come together for the purpose of making a coupling, they are supposed to come together at a very slow rate of speed, and certainly at a speed no greater than two or three miles an hour (fol. 333, 466).

IV.

Contention of Parties

It was upon this evidence that the plaintiff based her contention that the carrier was guilty of negligence. Specifically, the plaintiff contended that when Chamberlain's draft was moving in on track 14 at a slow rate of speed, the nine car draft came into violent contact with it, causing Chamberlain to be thrown from his position and to be run over by the nine car draft. The negligence lay in the fact that the nine car draft came in contact with Chamberlain's draft at an excessive and dangerous rate of speed.

The carrier's version as to how the accident happened was in sharp conflict with the plaintiff's version. Its proof was substantially to this effect:

Chamberlain was riding down the "Hump" with his cut of two cars, at a very fast rate of speed. One of the switchmen shouted to him to control his speed (fol. 356). Chamber-

lain then ran across the top of the cars to the brake on the head end. He slowed up when he got into track 14. The switchman who shouted to him saw no more of him after that.

Two brakemen who had ridden the cut in on track 14 ahead of Chamberlain, said that when they were bringing their cars to a stop on track 14, they felt a jar from the rear, and saw a cut of two cars come in contact with their cut. When they got down from their draft, they saw no car-rider on the cut behind them. One of them looked up the track and saw a body lying between the rails, raising itself, when the cut of nine cars came down and ran the body over. After the nine cars stopped they saw Chamberlain's body at the rear of the nine cars, about five or six car-lengths from the switch leading into track 14.

A witness for the carrier who testified to these facts, one Jetter, was accused by the plaintiff and two other witnesses, of having told them a story substantially to the same effect as Bainbridge's version. His credibility thus became an important issue in the case.

The Circuit Court of Appeals, in reversing the judgment, held that the evidence in the case presented a question of fact upon which reasonable men could fairly differ, and one which belonged to the functions of the jury. The only question therefore, arising in the case, is whether or not there was sufficient proof in support of plaintiff's contention to make out a case for the jury.

V.

Argument

POINT I.

There was indeed sufficient evidence of negligence presenting a question of fact for the jury to pass upon.

The carrier's argument is based chiefly on the assumption that there was no proof in the record as to how Chamberlain met his death. Throughout its petition and brief, wherever the subject is mentioned, it asserts that there is no proof in the record that a crash occurred between the nine car draft and Chamberlain's draft.

To make this assertion, it must necessarily rely on an erroneous statement and interpretation of the facts.

It states that Bainbridge's testimony has little weight, because after he saw Chamberlain's draft and the nine car draft on track 14, while Chamberlain was still at the brake, by his own statement he paid no more attention to the cars until he heard someone shout two or three minutes later (p. 6, Petitioner's Brief). And along the same line, the carrier makes the following statement (p. 6):

> "He stated that when he heard the shouting he looked up and saw all the cars going along track 14 together (R. 55)."

Now this is directly in conflict with the proven facts. Bainbridge testified that when he saw Chamberlain's draft in on track 14, followed by the nine car draft, he paid no more attention to it (fol. 160). He then said that when he heard the crash he naturally looked down (fols. 161, 3, 244, 6, 7). He then saw them drifting in on track 14 together and in one band (fols. 161, 164, 244, 6, 7), with Chamberlain no longer in sight, thus indicating that the nine car draft had come in contact with Chamberlain's draft, and all the cars were moving on track 14 in one group. It was after that, that he paid no more attention to it until he heard somebody holler (fols. 161, 165, 244, 6, 7). After he heard the hollering, he ran down there.

He said nothing about seeing cars moving in on track 14 in one band after he heard the hollering and his attention was attracted to the accident. What he saw regarding the movement of the drafts, he saw before his attention was attracted to the accident by the hollering (fols. 166, 7, 8). The Circuit Court of Appeals had no difficulty finding these facts in the record. In its opinion, in describing Bainbridge's testimony, it stated that Bainbridge, after he heard a loud crash, saw the two drafts together still moving, and the de-

ceased no longer in sight, and then stated that (p. 987):

> "Later still his attention was attracted by shouts and he went to the spot and saw him between the rails."

Of course, the carrier is in a position to make a strong argument in support of its contention, when its argument is based chiefly on an erroneous interpretation of the facts. Repeatedly it states in its petition and brief, that there is no proof in the record from which even an inference can be drawn, as to how Chamberlain met his death, and yet, when we observe the inaccuracy of the carrier's statement of the facts, we can readily see that the only reasonable inference to be drawn from the testimony of Bainbridge, is that the nine cars collided with Chamberlain's draft, and threw him from his position on the car to the ground and ran him over.

Especially is this so, when we bear in mind that in an action to recover for death, circumstantial evidence usually plays a very important part in establishing the necessary facts. *Choctaw Oklahoma & C. R. R. Co. vs. McDade*, 191 U. S. 64, 48, L. ed. 96; *N. Y. Central R. Co. vs. Marcone*, 281 U. S. 345, 74 L. ed. 892; *Cincinnati N. C. & T. P. Ry. Co. vs. Jones*, 192 Fed. 769 (C. C. A., 6th); *Slocum vs. Erie R. Co.*, 47 Fed., 2nd Series 216.

The facts in the cited cases are no more favorable than those involved here, and still

the courts had no difficulty in ascertaining the cause of the employee's death.

Here it is difficult to reach any other conclusion but the one reached by the Circuit Court of Appeals—that Chamberlain met his death by reason of the collision between his draft and the draft following his. With a true understanding of the facts in mind, it is indeed simple to determine the question of negligence. The nine car draft came in contact with Chamberlain's draft at a rate of speed that was in excess of the usual rate of speed at which cars should come together, and at a speed that is obviously dangerous to life and limb.

An attempt is made to minimize Bainbridge's testimony by arguing that the distance from the place where he was standing, to track 14, was too great to have enabled him to see what he testified to.

When we bear in mind that the tracks in the yard run easterly on a down grade, and Bainbridge's position in front of the yard office was to the west of these tracks, it is easier to understand how he could have observed the cars moving down the tracks.

Furthermore, there isn't a scintilla of evidence in the record which in any way casts doubt upon Bainbridge's ability to observe the movement of cars in or about track 14, from his position. No one testified that one standing in Bainbridge's position could not see what he said he saw. No one said that it was either improbable or impossible to have a clear

view of the movement of cars down the yard merely because of the distance.

Under these circumstances, therefore, it is idle to say that Bainbridge, as a matter of law, is not worthy of credence.

The carrier's brief concerns itself chiefly with the argument that the plaintiff's proof presented no more than a scintilla of evidence, and this was not enough to require its submission to the jury. It relies upon cases of this Court, wherein the facts have been analyzed and the conclusion reached that there were such inherent improbabilities in the version relied upon, as to justify a court in directing a verdict for the carrier.

The Circuit Court of Appeals had all of these cases before it and had the proposition involved in mind when it decided the question concerned here. In its opinion, it pointed out that there was nothing inherently improbable in Bainbridge's testimony. The fact that there were a number of witnesses on the other side who testified to a different version, did not strengthen the carrier's case, as a matter of law. The whole question is summed up in a few words (p. 987):

> "Nevertheless the question was really as to whom to believe, and when that is so, we do not understand that the jury may be displaced. There are of course cases where the story of one side is impossible because of its physical

> situation, or because it is incredible by common experience. *Southern Ry. Co. vs. Walters.* 284 U. S. 190, 52 S. Ct. 58, 76 L. ed.—was such a case."

The case of *Southern Ry Co. vs. Walters, supra,* is the case chiefly relied upon by the petitioner here. Yet the Circuit Court of Appeals had no difficulty finding the distinction between the two cases, as here, the preponderance of witnesses presented merely a sharp question of fact, while there, the witnesses relied upon for the plaintiff, gave versions as to the happening of the accident which in themselves were inherently improbable.

The only question involved in the case at bar, is one of veracity of witnesses, and the Circuit Court of Appeals was reluctant to lay down a new test to mark the zones of Court and jury. And therefore it stated (fol. 988):

> "To a majority of us it appears that the direction in the case at bar cannot stand without intruding upon the exclusive competence of the jury; without taking from them their power to decide who of those appearing before them are entitled to credence. * * *"

Under these circumstances, the case is hardly one that calls for the Court's exercise of supervisory powers in order to make for uniformity of decision, as there is nothing involved here but a plain question of fact upon which reasonable men might differ.

CONCLUSION.

It is respectfully submitted that the petitioner's application for a writ of certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent.

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